

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. N-05/09-293
)
 Appeal of)
)
 Revised Order

INTRODUCTION

The petitioner appeals the decision by the Department for Children and Families, Economic Services Division closing the petitioner's Reach Up Financial Assistance (RUFA) benefits and imposing a disqualification period before she can again become eligible for those benefits. The issue is whether the petitioner is disqualified from receiving RUFA due to her receipt of a lump sum personal injury settlement.

On December 4, 2009, the Board entered an Order affirming the Department's decision (copy attached). On January 4, 2010, the petitioner filed a request to reopen the matter based, *inter alia*, on a claim that her attorney in the matter had failed to provide the Board with crucial evidence. The Department did not oppose the reopening of the matter, and agreed to consider the new evidence submitted by the petitioner.

As discussed below and in the Board's December 4, 2009 Order, the petitioner's claim in this matter concerns two

separate payments of \$1000 she made out of a lump sum insurance settlement she received in February 2009. In a letter to the hearing officer dated February 17, 2010 (copied to the petitioner), the Department informed the Board that it had reconsidered (despite having been affirmed by the Board) and reversed itself regarding its treatment of the petitioner's \$1,000 payment for a forensic evaluation pursuant to a custody dispute in Family Court. However, the Department further informed the Board and the petitioner that it would not reconsider its (and the Board's) decision regarding the \$1,000 payment the petitioner had made to a friend as "reimbursement" (see *infra*) for day care and transportation the friend had provided to her and her son in 2007 and 2008.

The following Revised Recommendation affirms the Department's decision regarding the latter payment. It essentially removes most of the sections of the Board's December 4, 2009 Order that dealt with the forensic evaluation and adds additional findings regarding the other payment based on the additional evidence submitted by the petitioner in her request to reopen. Otherwise, it essentially incorporates the Board's prior Order.

FINDINGS OF FACT

1. In February 2009 the petitioner was a recipient of RUFA benefits. That month the petitioner reported to the Department that she had received an insurance settlement of \$5,305.02.

2. On March 19, 2009 the Department issued a decision closing the petitioner's RUFA grant and assessing a disqualification period (see *infra*). The issue in the case is whether certain bills the petitioner paid out of her lump income should be considered "eligible expenses" that can be deducted from the lump sum in determining the length of the petitioner's disqualification from RUFA.

3. Following the petitioner's request for hearing, and upon the petitioner furnishing further documentation, the Department determined that several of the payments the petitioner made when she received her lump sum would be allowed, and the Department has recalculated the petitioner's disqualification period accordingly. As noted above, following the petitioner's request to reopen the matter, the Department allowed another expense claimed by the petitioner (payment of \$1,000 to the Family Court for a forensic evaluation).

4. The remaining expense in dispute is a check for \$1,000 the petitioner paid on February 19, 2009 to a friend as "reimbursement" for day care and transportation for her and her son to visitations and medical appointments in 2007 and 2008.

5. The petitioner ultimately (following the request to reopen) provided further details and documentation as to why the transportation and day care provided by her friend were essential. However, as noted by the Board in its Order of December 4, 2009, the petitioner still has provided no evidence of a contract or other binding agreement that the friend who provided transportation and day care in 2007 and 2008 did so with any expectation of payment. The petitioner maintains only that the friend "trusted me that I would pay her back from the lump sum", and that since her child "trusted" the friend it "worked out" to have the friend transport him.

6. The petitioner also submitted evidence that she received a day care subsidy from the Department for Children and Families, Child Development Division to have her son attend the friend's day care. However, she has never provided any specific accounting for the transportation services her friend provided.

ORDER

The Department's decision is affirmed.

REASONS

The regulations regarding lump sum income at W.A.M. § 2270.1 include the following provisions:

2250.1 Lump Sum Income

The applicant or recipient of Reach Up is responsible for notifying the Department promptly upon receipt of any lump sum payment of earned or unearned income.

Lump sum payments, including windfall payments, shall be counted as income unless excluded under an exception cited below.

. . .

Lump sum payments which are not excluded should be added together with all other non-Reach Up income received by the assistance group during the month. When the total less applicable disregards exceeds the standard of need for that family, the family will be ineligible for ANFC for the number of full months derived by dividing this total income by the need standard applicable to the family. Any remaining income will be applied to the first month of eligibility after the disqualification period.

The period of ineligibility due to a lump sum benefit may be recalculated if:

- A. An event occurs which, had the family been receiving assistance, would have changed the amount paid.
- B. The income received has become unavailable to the family for circumstances beyond its control. Such circumstances are limited to the following unless the Commissioner or his or her designee determines

that the recipient's circumstances are substantially similar to those described below:

1. death or incapacity of the principal wage earner.
2. loss of shelter due to fire or flood.
3. repairs to owner-occupied homes which are essential to the health and safety of the family.
4. repair or replacement of essential, major household appliances.
5. repair or purchase of one motor vehicle per Reach Up assistance group, essential for employment, education, training or other day-to-day living necessities. Expenses may include purchase and use tax, inspection fee, insurance, and registration fees, but not day-to-day operating expenses.
6. payments attributable to current monthly housing expenses (as defined in WAM 2264) which are in excess of the maximum monthly Reach Up housing allowance. Advance payments (i.e. payments for expenses which will be incurred after the period of ineligibility has ended) toward excess monthly housing expenses are not allowed.
7. payment of expenses which meet the following criteria:
 - a. The bills were overdue as of the date of lump sum income was received.
 - b. The bills were the legal liability of the client or other member of the assistance group.
 - c. The client provides documentation that the lump sum income was used to pay the bills.

Eligible expenses under "7" above are as follows and are restricted to those of the primary residence and would include any late charges described in payment agreements or allowed by Public Service Board rules.

- a. overdue rent (including lot rent)

- b. overdue mortgage payments (principal and interest)
- c. overdue property taxes
- d. overdue homeowner's insurance
- e. overdue heating bills
- f. overdue utility bills (e.g. electricity, gas, water, or sewage)
- g. overdue telephone bills (basic monthly charge, applicable taxes, plus \$5 per month in toll charges)
- h. overdue child care expenses necessary for a member of the assistance group to maintain employment, with the following limitation. If the overdue expenses were incurred when the individual was receiving Reach Up, only the unsubsidized amounts attributable to employment-related child care are considered eligible expenses.
- i. overdue expenses for one motor vehicle per Reach Up assistance group, essential for employment, education, training or other day-to-day living necessities. Expenses may include overdue bills for repairs, purchase and use tax, inspection fee, insurance, and registration fees, but not day-to-day operating expenses.

C. The family incurs and pays for medical expenses which offset the lump sum income.

In this case, the petitioner argues that her friend's services were necessary for the petitioner to comply with court orders regarding visitation and her son's attendance at mental health evaluations and counseling. Assuming that the evidence shows that the services were necessary, and that the petitioner *could* prove that the amount (\$1,000) she reimbursed her friend was reasonable for the type and amount

of services the friend provided (as noted above, this evidence is still lacking), there is still no credible claim or evidence that the petitioner ever "contracted" with her friend for these services, or that her friend had any legally enforceable claim to be "reimbursed" for them. Thus, it still cannot be concluded that any payment for them was "overdue", or that making the payment rendered this portion of the lump sum "unavailable to the family for circumstances beyond its control", within the meaning and contemplation of the above regulation.

For the above reasons, it must again be concluded that the Department's decision in the matter is in accord with the above regulation and, therefore, must be affirmed. 3 V.S.A. § 3091(d), fair Hearing Rule No. 1000.4D.

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